

inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. In order to be responsive to the Official action, it is believed that the applicants must make elections (A) and (B) as defined below.

(A) Firstly, applicants must elect one of the following groups of invention:

- I. Claims 1-7, 13-14, and 18-25 directed to a composition, or
- II. Claims 8-12, directed to a method. *process for producing*

(B) Secondly, the applicants must elect one species of the foods defined in claim 14. In particular, the applicants must elect one of candy, chewing gum, juice, chocolate, tablet, gelatinous food, and jam. The Official action stated that claims 1-7, 13, and 18-25 are generic claims.

Applicant hereby elects the group I invention, which is directed to a composition and contains claims 1-7, 13-14, and 18-26, with traverse.

Applicant further hereby elects the species of "juice" in claim 14 with traverse.

The Official action did not mention pending claim 26. This claim should be treated in the same manner as the other composition claims and included in the group I, as identified above. Therefore, this claim should be included in the elected invention to be examined on the merits. Applicant elected claim 26, together with claims 1-7, 13-14, and 18-25, above.

There is no claim 26

Applicant respectfully traverses the combination restriction/election of species requirement as set forth in the outstanding Office action. In particular, applicant respectfully requests that the examiner reconsider and withdraw the restrictions and/or election of species requirement for applicant's claims, so that claims 1-26 are examined together.

While the Official action espoused PCT rules 13.1 and 13.2, the Official action did not properly apply these rules to applicant's claims. For example, the Official action stated that the special technical feature of group I is considered to be a composition comprising a black currant anthocyanin, and the special technical feature of group II is considered to be a process for producing black currant anthocyanin compositions. The Official action continued that the process of group II can be practiced with another invention, such as ultrafiltration or dialysis using a semi-permeable membrane. These reasons for restriction may be proper for regular, non-PCT applications, but they are not applicable to the present PCT national phase application. Due to the fact that proper reasons in support of the lack of the unity of invention under PCT were not set forth in the outstanding Office action, applicant respectfully submits the lack of unity of invention requirement must fail and should be withdrawn.

For the examiner's reference, applicant is attaching hereto Annex B, Unity of Invention, Part 1, Manual of Patent Examining Procedure. Attention is respectfully directed to section (e) beginning at the bottom of page AI-53. As explained therein, Rule 13 permits the inclusion of an independent claim for a given product, an independent claim for a process especially adapted for the manufacture of the product, and an independent claim for use of the product. Further, the words "specially adapted" are not intended to imply that the product could not also be manufactured by a different process. Attention is also directed to Example 1 on page AI-53 of the attached Annex B. This

example is identical to that of applicant's claims including a claim directed to a method of manufacturing a black currant anthocyanin, and a claim to the black currant anthocyanin compound itself or in a composition claim. In the situation presented in applicant's claims, the special technical feature common to all of applicant's claims is the black currant anthocyanin. Since this special technical feature is present in all of pending claims 1-26, applicant respectfully submits that the lack of unity of invention cannot be made for the present claims. Therefor, applicant respectfully requests that the examiner reconsider and withdraw the lack of unity requirement.

Considering the election of species requirement for present claim 14, applicant respectfully submits that the special technical feature of claim 14 is the black currant anthocyanin compound. The form of the composition, such as candy, chewing gum, juice, chocolate, tablet, gelatinous food, or jam does not change the fact that the composition contains the black currant anthocyanin. Therefor, an election of species cannot be made between the forms of compositions as set forth in claim 14 of the present application under PCT.

In addition to the above, applicant respectfully directs the examiner's attention to example 3 on page AI-57 of the attached Annex B, where a process for painting with a paint containing a new rust inhibiting substance A and a claim directed to a paint containing substance A are considered to have unity of invention. The common special technical feature is the paint containing substance A. See also example 15 on page AI-60, where a claim to compound


A and a composition claim containing compound A and a carrier are stated to have unity of an invention, because compound A is the special technical feature common to all the claims.

For the foregoing reasons, applicant respectfully requests that the examiner reconsider and withdraw the combination restriction/election of species requirement as set forth in the outstanding Office action, so that all claims 1-26 will be examined together. In the event the combination restriction/election requirement is not withdrawn, applicant hereby reserves the right to petition the Commissioner on this matter and/or to remove this requirement.

The foregoing is a complete and proper response to the Official action mailed December 11, 2002. Should the examiner have any comments or questions, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues.

In the event that this paper is not timely filed, applicant hereby petitions for an appropriate extension of time. The Commissioner is hereby authorized to charge the fee therefor, as well as any deficiency in the payment of the required fee(s) or credit any overpayment, to our deposit account No. 22-0256.

Respectfully submitted,
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